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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 97

RALPH PICCIRILLO,

Petitioner

v.

NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF FOR PETITIONER

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INDEX

SUBJECT INDEX

OPINION BELOW 1

JURISDICTION 2

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

QUESTIONS PRESENTED 4

STATEMENT 4

SUMMARY OF ARGUMENT 11

ARGUMENT:

I. Petitioner's Indictment by the Same Grand Jury Before Which He Was Compelled To Testify Was in Violation of His Privilege Against Self-Incrimination as Guaranteed by the Fifth and Fourteenth Amendments 13

II. The Indictment of Petitioner for a Crime to Which His Compelled Testimony Was Directly Related Violated His Privilege Against Self-Incrimination as Guaranteed by the Fifth and Fourteenth Amendments 18

A. To fully satisfy the requirements of the Fifth and Fourteenth Amendments, a grant of immunity must afford protection against indictment as to any transaction to which the compelled testimony relates 18

B. The crime for which petitioner was indicted related directly to a transaction to which he testified, and therefore his indictment was barred by the immunity to which he was constitutionally entitled 26

III. The Denial of Petitioner's Request To Consult With Counsel in Connection With His Testimony Before the Grand Jury Deprived Him of His Right to Counsel Under the Sixth and Fourteenth Amendments 28

CONCLUSION 42

APPENDIX A Decision of New York Court of Appeals in *Matter of Gold v. Menna* ..... A 1

APPENDIX B Survey of State and Federal Immunity Legislation ..... B 1

TABLE OF AUTHORITIES

CASES

Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965) 17

Bachellar v. Maryland, 396 U.S. 816 (1970) 17

Brown v. State, 233 Md. 288, 196 A.2d 614 (1964) 24

Brown v. Walker, 161 U.S. 591 (1896) 18, 19, 21, 24, 29

Bruton v. United States, 391 U.S. 123 (1968) 17

1 Burr's Trial (1879 Ed.) 13

Cassell v. Texas, 339 U.S. 282 (1950) 14

Coleman v. Alabama, ___ U.S. ___, 7 Cr.L. 3121 (decided June 22, 1970) 28

Commonwealth v. Kilgallen, 379 Pa. 315, 108 A.2d 780 (1954) 14, 17

Counselman v. Hitchcock, 142 U.S. 547 (1892) 11, 13, 18, 19, 21

Doyle v. Hofstadter, 257 N.Y. 244, 177 N.E. 489 (1931) 22, 24

Escobedo v. Illinois, 378 U.S. 478 (1964) 28

Fubanks v. Louisiana, 356 U.S. 584 (1958) 14

Ex Parte Cohen, 104 Cal. 524, 38 Pac. 364 (1894) 24

Feldman v. United States, 322 U.S. 487 (1944) 18

Glickstein v. United States, 222 U.S. 139 (1911) 18

Hale v. Henkel, 201 U.S. 43 (1906) 14, 23, 24

Hamilton v. Alabama, 368 U.S. 52 (1961) 28

Heike v. United States, 227 U.S. 131 (1913) 27

Hirsch v. State, 8 Baxt. (67 Tenn.) 89 (1874) 24

Hoffman v. United States, 341 U.S. 479 (1951) 13, 15
Hurtado v. California, 110 U.S. 516 (1884) 14
In Re Watson, 293 Mich. 263, 291 N.W. 652 (1940) 24
Jackson v. Denno, 378 U.S. 368 (1964) 17
Jenkins v. State, 65 Ga. App. 16, 14 S.E.2d 594 (1941) 14
Jones v. United States, 342 F.2d 863 (D.C. Cir. 1964) 16, 17
Kitchell v. United States, 354 F.2d 715 (1st Cir. 1965) 30
Knapp v. Schweitzer, 357 U.S. 371 (1958) 18
Lumber Products Ass'n v. United States, 144 F.2d 546 (9th Cir. 1944) 27
Malloy v. Hogan, 378 U.S. 1 (1964) 13, 18, 19, 22
Matter of Gold v. Menna, 25 N.Y.2d 475, 307 N.Y.S.2d 33 (1969) 10, 19, 22, 31
Miranda v. Arizona, 384 U.S. 436 (1966) 28
Murphy v. Waterfront Commission, 378 U.S. 52 (1964) . . . 18, 19, 20
Norris v. Alabama, 294 U.S. 587 (1932) 14
People v. Bermel, 71 Misc. 356, 128 N.Y. Supp. 524 (Sup. Ct. Queens Co. 1911) 14
People v. Boyle, 312 Ill. 586, 144 N.E. 342 (1924) 24
People v. Ianniello, 21 N.Y.2d 418, 288 N.Y.S.2d 462 (1968), cert. den. 393 U.S. 827 . . . . . 29, 30
People v. Kelly, 24 N.Y. 74 (1861) 22
People v. Schneider, 133 Colo. 173, 292 P.2d 982 (1956) 14
Price v. Georgia, ___ U.S. ___, 7 CrL 3103 (decided June 15, 1970) 17
Rogers v. United States, 340 U.S. 367 (1951) 18
Salyers v. Commonwealth, 274 Ky. 284, 118 S.W.2d 208 (1938) 14
Sheridan v. Garrison, 273 F. Supp. 673 (E.D. La. 1967) 30

Smith v. United States, 337 U.S. 137 (1949) 23, 28

State v. Corteau, 198 Minn. 433, 270 N.W. 144 (1936) 14

State v. Jemison, 240 La. 787, 125 So.2d 363 (1960) 14

State v. Naughton, 221 Mo. 398, 120 S.W. 53 (1909) 14, 17

State ex rel. North v. Kirtley, 327 S.W.2d 715 (Mo. 1936) 24

State v. Nowell, 58 N.H. 314 (1878) 24

State v. Sarcone, 96 N.J. Super. 501, 233 A.2d 406 (Super. Ct. N.J. Law Div. 1967) 24

State v. Sly, 63 S.D. 162, 257 N.W. 113 (1934) 14, 17

Stevens v. Marks, 383 U.S. 234 (1966) 19, 20

Street v. New York, 394 U.S. 576 (1969) 17

Stromberg v. California, 283 U.S. 359 (1931) 17

Ullmann v. United States, 350 U.S. 422 (1956) 19, 23, 29

United States v. DiGrazia, 213 F.Supp. 232 (N.D. Ill. 1963) 17

United States v. Goldman, 28 F.2d 424 (D. Conn. 1928) 16

United States v. Irwin, 354 F.2d 192 (2nd Cir. 1965) 30

United States v. Monia, 317 U.S. 424 (1943) 23

United States v. Murdock, 284 U.S. 141 (1931) 18, 23

United States v. Proctor & Gamble Company, 356 U.S. 677 (1958) 30

United States v. Rose, 215 F.2d 617 (3rd Cir. 1954) 30

United States v. The Saline Bank of Virginia, 26 U.S. (1 Pet.) 100 (1828) 15

United States v. Wade, 388 U.S. 218 (1967) 28

United States ex rel. Vanderhorst v. LaVallee, 417 F.2d 411 (2nd Cir. 1969), cert. den. sub nom. McMann v. Vanderhorst, 397 U.S. 925 31

Von Moltke v. Gillies, 332 U.S. 708 (1948) 31

White v. Maryland, 373 U.S. 59 (1963) 28

CONSTITUTIONAL PROVISIONS:

Constitution of the United States

Fifth Amendment 2
Sixth Amendment 2
Fourteenth Amendment 2

STATUTES:

11 Stat. 156 20

12 Stat. 333, R.S. § 860 20

27 Stat. 443 (1893) 21

New York Code of Criminal Procedure,
Sec. 619-c 3

New York Penal Law of 1909
Sec. 378 15
Sec. 2447 2

Utah Code Annotated 77-19-3 30

OTHER AUTHORITIES:

38 A.L.R. 2d 237 (1954) 14

53 A.L.R. 2d 1030 (1957) 23

Congressional Globe, 37th Cong., 2d Sess. (1862) 20

Gold, *Privilege Against Self-Incrimination in Federal Grand Jury Proceedings*, 24 Temp. L.Q. 395 (1951) 17

McCormick on Evidence, § 135 (1954) 24

Meshbesher, *Right to Counsel Before Grand Jury*, 41 F.R.D. 189 ..... 28, 30

Model State Witness Immunity Act, 9 U.L.A. 186 (1957) 23

Note, *The Federal Witness Immunity Acts in Theory and Practice: Treading The Constitutional Tightrope*, 72 Yale L.J. 1568 (1963) 23

Orfield, *The Federal Grand Jury*, 22 F.R.D. 343 ..... 14, 30

The Supreme Court: 1963 Term, 78 Harv. L. Rev. 143 28

Wendel, *Compulsory Immunity Legislation and the Fifth Amendment Privilege: New Developments and New Confusion*, 10 St. Louis L.J. 327 (1968) 23

4 Wharton's Criminal Procedure, § 1719 (1957) 30

8 Wigmore, Evidence, § 2281 (McNaughton rev. 1961) 23, 24

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OPINION BELOW

The majority and dissenting opinions of the New York Court of Appeals are reported at 24 N.Y.2d 598, 301 N.Y.S.2d 544, and appear in the printed appendix at pages 113-123. The majority and dissenting opinions of the Appellate Division of the Supreme Court, Second Judicial Department are reported at 30 A.D.2d 664, 291 N.Y.S.2d 881, and appear in the printed appendix at pages 107-112. The opinion of the Supreme Court, Kings County, is not officially reported and appears in the printed appendix at pages 65-66.

JURISDICTION

The judgment of the New York Court of Appeals was entered April 24, 1969 (R. 111).[1] Petition for writ of certiorari was filed July 19, 1969 and certiorari was granted February 27, 1970. The jurisdiction of the Court is invoked pursuant to Title 28 of the United States Code, Section 1257(3).

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Amendment V

* * *

UNITED STATES CONSTITUTION

Amendment VI

* * *

UNITED STATES CONSTITUTION

Amendment XIV, Section 1

* * *

NEW YORK PENAL LAW OF 1909

Section 2447[2]

1. In any investigation or proceeding where, by express provision of statute, a competent authority is authorized to confer immunity, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and, notwithstanding such refusal, an order is made by such competent authority

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[1] References "R" are to the separate appendix filed pursuant to Rule 36.

[2] This section is applicable to offenses committed before September 1, 1967.

that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

2. "Immunity" as used in this section means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by competent authority, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order; and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

NEW YORK CODE OF CRIMINAL PROCEDURE

Section 619-c[3]

1. In any investigation or proceeding where, by express provision of section six hundred nineteen-d of this chapter or any other statute, a competent authority is authorized to confer immunity, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and, notwithstanding such refusal, an order is made by such competent authority that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this section, he would have been privileged to withhold the answer given or

[3]This section is applicable to offenses committed after September 1, 1967.

the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

2. "Immunity" as used in this section means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order by competent authority, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any such answer given or evidence produced shall be admissible against him upon any criminal proceeding concerning such perjury or contempt.

QUESTIONS PRESENTED

1. Whether petitioner's indictment by the same grand jury before which he was compelled to testify was in violation of his privilege against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments.

2. Whether the indictment of petitioner for a crime to which his compelled testimony was directly related violated his privilege against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments.

3. Whether the denial of petitioner's request to consult with counsel in connection with his testimony before the grand jury deprived him of his right to counsel under the Sixth and Fourteenth Amendments.

STATEMENT

On March 19, 1964, petitioner and Anthony LaBello were arrested by Patrolman William A. Sewell for assaulting Jack Graham, a housing contractor, with tire irons (R. 34, 35, 55). The tire irons were recovered from the possession of petitioner and LaBello at the time of the arrest (R. 55),

The next day, after their arraignment in Criminal Court, petitioner allegedly offered Sewell $1500 to change his testimony, get rid of one of the weapons and supply the names of possible witnesses (R. 55-56). Sewell agreed to meet petitioner and LaBello that night at a restaurant (R. 56).

Sewell reported the incident immediately to his commanding officer and to Assistant District Attorney Panzarella (R. 56). He was furnished a miniphone tape and proceeded to meet with petitioner and LaBello that evening when the bribe offer was repeated (R. 58). He reported the occurrence to the District Attorney's office and to a detective in the Criminal Investigation Bureau and returned the miniphone tape to the District Attorney (R. 59).

Petitioner and LaBello were subsequently indicted for assault in the second degree and on September 9, 1964, entered pleas of guilty to attempted assault in the second degree. On January 11, 1965, they were sentenced to one year, three months to two years, six months imprisonment. In March, 1965, a grand jury was empanelled to investigate "the assault on Jack Graham and conspiracies arising therefrom." Petitioner, who was serving his sentence on the assault conviction, was called to testify on March 18, 1965. Assistant District Attorney Panzarella conducted the inquiry. Prior to any questioning, the following occurred (R. 32-34):

> Ralph Piccirillo, residing at Sing Sing Prison, was duly sworn as a witness and testified as follows:
>
> BY MR. PANZARELLA:
>
> Q. Mr. Piccirillo, this grand jury is investigating the assault on Jack Graham and any conspiracies in connection therewith. You have been called as a witness before this grand jury, you were sworn, which means that under the law you cannot be prosecuted for whatever testimony you give in answer to any questions put to you. You have already been convicted by your own plea of guilty in the crime of assault on Jack Graham and you

cannot be prosecuted anymore for that. I am going to do one thing. I am going to ask this grand jury to vote on the question of giving you immunity and under Penal Law Section 2447 for the testimony that you will give in this grand jury and that means anything that I ask you and any answers that you give in answer to my questions if it connects you with the crime you cannot be prosecuted for it. That's immunity, do you understand that?

A. Yes.

Q. Now, if you would step out of the room, the grand jury will vote on the question of whether to give you immunity or not.

(Whereupon the witness, Ralph Piccirillo, Mr. Panzarella, and the stenographer left the room.)

(Whereupon the witness, Ralph Piccirillo, resumed the stand and testified as follows:)

Mr. Panzarella: Mr. Foreman, has the grand jury, taken a vote on the granting of immunity to this witness?

The Foreman: We have.

Mr. Panzarella: What was your vote?

The Foreman: We have voted to grant this man immunity.

BY MR. PANZARELLA:

Q. Now Mr. Piccirillo, you heard the foreman of the grand jury?

A. Yes.

Q. You heard that the grand jury has voted to grant you immunity under the law of Section 2447 and again I repeat that means that any testimony you give here if it connects you with the crime you cannot be prosecuted for it?

A. Yes.

Q. Now, you said you wanted to make a statement, make your statement.

A. I just want you to know I'll answer the questions. I'd just like to speak to my lawyer.

Q. Under these circumstances you are not a defendant, you are a witness, you have been given immunity. That means you cannot be prosecuted. Your rights are fully protected and there is no reason for your conferring with your attorney, do you understand that?

A. Yes.

Q. Now, I'll put the questions to you.

Petitioner admitted he had been convicted of assaulting Jack Graham and he admitted his guilt of the crime (R. 34-35). When asked why he had committed the crime, he testified that he and LaBello had met a man named "Tony" in a diner who had offered him money to commit the assault (R. 35, 38). Petitioner described the weapons he had been given to commit the assault as tire irons, and specified that he had used the larger tire iron while his co-defendant had used the smaller one (R. 40, 43).

In answer to further questioning, petitioner testified that "Tony" had driven him and LaBello to the scene of the assault—a housing project in Brooklyn—in a black, four-door Ford (R. 41, 42). Graham arrived in a car, parked it and got out, and petitioner then walked over and hit him (R. 42). He admitted he had been caught by a policeman while running from the scene (R. 35).

Petitioner further testified that after his arrest he had been at liberty on bail pending his conviction (R. 44-45).

Four days later, on Monday, March 22, 1965, Patrolman Sewell was called to testify before the same grand jury. Again Mr. Panzarella was in charge of the inquiry. Patrolman Sewell testified that on March 19, 1964, after a chase, he had arrested petitioner and LaBello (R. 55). They had admitted being hired to commit the assault and he had seized from them tire irons which he displayed to the grand jury (R. 55). The larger weapon was in petitioner's possession, the smaller in LaBello's (R. 55).

Sewell further testified that when petitioner and LaBello were released on bail at their arraignment the next day, petitioner offered him a bribe to change his testimony, to get rid of one of the weapons, and to supply the names of possible witnesses (R. 56).

They arranged a meeting for that night at a restaurant (R. 56). Sewell immediately reported the offer to his superior and to Assistant District Attorney Panzarella, and he was equipped with a miniphone and advised to attend the meeting (R. 56-57).

At the restaurant, petitioner admitted using the larger weapon and LaBello admitted using the smaller one (R. 58). Petitioner told him they had met someone at a diner who had offered them money to attack Graham (R. 58). Petitioner then described to Sewell how Graham was pointed out to him in the parking lot and how he assaulted him when he left his car (R. 58). This conversation was reported to the District Attorney's office and the miniphone was returned (R. 59).

On July 14, 1965, petitioner and LaBello were indicted by the same grand jury for the bribery of Patrolman Sewell (R. 61). They moved to dismiss the indictment on the grounds that it was based on illegal evidence and was obtained in violation of their privilege against self-incrimination and the immunity which they had been granted (R. 62-64). The motion was denied by Judge Malbin because "[t]he testimony furnished by them could not be construed in the slightest degree that it offered a lead or suspicion that their testimony was related to the allegations set forth in the indictment" (R. 65-66).

Petitioner and LaBello proceeded to trial before Judge Malbin on December 16, 1965. Following the selection of the jury, the prosecutor outlined the case he intended to prove, which included the defendants' apprehension by Sewell at the housing project for the assault with weapons on Jack Graham (R. 69). Patrolman Sewell then testified, *inter alia*, that he had arrested petitioner and LaBello as

they were running from the housing project and that he had recovered a tire iron and a lug wrench (R. 73-74).

On December 17, 1965, before defense counsel had finished cross-examining Patrolman Sewell, both defendants offered to plead guilty to attempted bribery to cover the indictment and any other matters pending and known to the District Attorney (R. 92-93). The assistant district attorney agreed and the plea was accepted (R. 93).

When petitioner and LaBello were arraigned for sentencing, on January 19, 1966, Hon. Aaron E. Koota, then District Attorney of Kings County, appeared in person for the People (R. 100). Mr. Koota advised the court that he was interested in the assault on Jack Graham because of its relationship to improper conduct by officials of the New York City Housing Authority (R. 101-102). He stated that the sentencing of petitioner and his co-defendant on the assault charge had been deferred in hopes that they would cooperate with the District Attorney's office, but they were "intransigent" so the sentence was executed (R. 102). The two were then interrogated before the grand jury, but told an unsatisfactory story, and so the bribery charge, of which the District Attorney already had knowledge, was prosecuted, although he would have granted immunity in the bribery case and have arranged clemency in the assault case if petitioner and LaBello had told who had hired them (R. 103). When the defendants had appeared for sentencing two weeks earlier they had been given a chance to talk, but they did not (R. 104). Mr. Koota therefore requested that the sentence on the bribery charge run consecutively to the sentence on the assault charge (R. 104).[4] Although the defendants stated, through counsel, that they had no information, the court sentenced petitioner to one year, six months to three years to run consecutively to the sentence imposed on the assault charge (R. 105).

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[4]The defendants had pleaded guilty to attempted bribery on an earlier occasion, but the plea was vacated because Mr. Koota was not satisfied with the sentence that was going to be imposed (R. 105).

On June 3, 1968, the Appellate Division, Second Judicial Department, affirmed petitioner's conviction without opinion (R. 106). Mr. Justice Martuscello dissented on the ground that the admissions before the Grand Jury "related to facts and circumstances which would require the official conduct they allegedly sought to frustrate, and thus constituted a link in the chain of evidence necessary to prove the crime for which they were indicted" (R. 108). Justice Martuscello concluded that the bribery charge was covered by the immunity which had been granted (R. 109-110).

On April 24, 1969, the Court of Appeals affirmed the Appellate Division order (R. 111-112) in an opinion by Judge Keating (R. 113-119), which held that the New York immunity statute and the federal constitution required that a witness compelled to testify before a grand jury be protected only from the use of his testimony or its fruits, and that the indictment in this case was based on Patrolman Sewell's testimony untainted by petitioner's testimony (R. 113-114). Judge Bergan dissented in an opinion joined by Chief Judge Fuld and Judge Breitel (R. 120-123). The dissenters felt that petitioner's testimony was material and relevant to the bribery charge and that therefore under settled Law of New York they had obtained complete immunity (R. 121-122).

The majority further ruled that petitioner's claim that he had been deprived of his right to counsel was without merit, since petitioner's answers did not form the basis of the indictment and a lawyer could do nothing more than ensure that petitioner would obtain the immunity which he did in fact receive (R. 119).

In a later decision, *Matter of Gold v. Menna*, 25 N.Y.2d 475, 307 N.Y.S.2d 13 (1969), the Court of Appeals ruled that New York's immunity statute did in fact confer "transactional immunity." However, the Court of Appeals stated that petitioner's conviction was proper since "[he] gave no testimony which related or pertained to the offense for which [he was] prosecuted and of which [he was] con-

victed." 25 N.Y.2d at 481, n. 1, 307 N.Y.S.2d at 38, n. 1. The decision of the Court of Appeals in the *Menna* case is set forth as Appendix A.

SUMMARY OF ARGUMENT

The Fifth and Fourteenth Amendments prohibit the use of a witness' compelled testimony in aid of a criminal prosecution against him. This protection extends to the use of such testimony by a grand jury as the basis of an indictment against a witness summoned before it. Petitioner was compelled to admit to committing an assault upon Jack Graham during a grand jury investigation of this assault and conspiracies arising in connection with it. Four days later the police officer was called before the grand jury to testify to a bribe offer made by petitioner to induce the officer to conceal the assault. Petitioner was then indicted by the same grand jury. Petitioner's testimony supplied the underlying motive for the bribery and corroborated many of the details of the officer's testimony. The grand jury also had an opportunity to observe petitioner's demeanor and assess his character. Under these circumstances, the majority below erred in concluding that the indictment was not the product of petitioner's testimony and therefore did not violate his privilege against self-incrimination.

Petitioner's constitutional privilege against self-incrimination was further violated by his indictment and conviction for a crime arising out of a transaction to which his compelled testimony related. Ever since the Court's decision in *Counselman v. Hitchcock*, 142 U.S. 547 (1892), a witness has been entitled to immunity from prosecution for any transaction to which his compelled testimony relates. Only by thus removing any aspect of criminality from the compelled testimony can the immunity grant be coextensive with the constitutional privilege. The transactional immunity rule has been generally adhered to among the states and reaffirmed on several occasions by this Court. The wisdom of the rule is best evidenced by the district attorney's abuse

of power in this case prosecuting petitioner for bribery in retribution for his inability to provide desired information during the course of his testimony compelled by the prosecutor's promise of "immunity".

Recognizing that its conclusion that petitioner was not entitled to transactional immunity as a matter of law was error, the majority below subsequently held that his compelled testimony as to the assault on Jack Graham did not materially relate to the bribery charge. This, too, was error. The subject matter of the bribery was the assault itself, and petitioner was thus entitled to immunity from prosecution for bribery.

Petitioner's right to the assistance of counsel under the Sixth Amendment was also violated by the denial of his request to consult with counsel outside the grand jury room immediately before testifying. The grand jury proceeding is a critical stage of the criminal process because substantial legal rights can be affected. In this case petitioner was greatly prejudiced by the denial of his request for the advice of counsel. Given the vagaries and pitfalls of the New York immunity statute, only his lawyer could have adequately counseled petitioner as to the many possible consequences of his testifying to the assault on Jack Graham. His lawyer could have clarified the scope of protection to which the prosecutor believed petitioner was legally entitled and could have negotiated for even greater protection, if necessary. That petitioner now stands before this Court having been convicted of bribing the police officer who arrested him for the assault to which he testified before the grand jury amply demonstrates that the only legal advice he did receive—the District Attorney's assurance that he was "fully protected"—was not only insufficient but misleading.

ARGUMENT

Point I

PETITIONER'S INDICTMENT BY THE SAME GRAND JURY BEFORE WHICH HE WAS COMPELLED TO TESTIFY WAS IN VIOLATION OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS.

After having testified before a Kings County Grand Jury investigating the assault on Jack Graham and "conspiracies arising therefrom," petitioner was indicted by the same grand jury for the crime of bribery of the police officer who had arrested him for the assault. It is evident from the statements which petitioner was compelled to make before the grand jury that his testimony was used by the grand jury as a basis for return of the indictment against him. The indictment should have been dismissed as it was obtained in violation of his privilege against self-incrimination.

In *Malloy v. Hogan*, 378 U.S. 1 (1964), the Court held that the Fifth Amendment's privilege against self-incrimination applied to the States and that whether the privilege has been violated is to be determined by reference to federal constitutional standards. 378 U.S. at 11. These standards, as earlier decreed by the Court, have established that the privilege extends to any testimony that would support a criminal conviction, would furnish a link in the chain of evidence against the witness, or would tend to show that the witness had committed a crime. *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *Counselman v. Hitchcock*, 142 U.S. 547, 562 (1892); 1 *Burr's Trial* 254 (1879 ed.). The Court has also held that the protections afforded by the privilege are not restricted to the trial stage of the criminal process but are also operative as to grand jury proceedings. *Counselman v. Hitchcock, supra*, 142 U.S. at 563.

Thus, once testimony has been compelled from a witness, its use as the basis for an indictment should be precluded in the same manner as its use at the trial proper would be. Any other result would impose upon an individual the necessity of experiencing anxiety and expense and possible pre-trial incarceration in order to defend himself against a prosecution instituted upon a violation of his Fifth Amendment rights. Such a process would demean the spirit of the grand jury system itself, which this Court has stated is designed "to stand between the prosecutor and the accused" [*Hale v. Henkel*, 201 U.S. 43, 45 (1906)], and which is intended to prevent an individual from subjection to such consequences without being first properly charged. *Hurtado v. California*, 110 U.S. 516, 552 (1884) (Mr. Justice Harlan, dissenting).

Because of the sanctity of the indictment process, this Court has often ruled that an indictment must be dismissed where the grand jury venire was empanelled under discriminatory practices which violate the equal protection clause of the Fourteenth Amendment. *Norris v. Alabama*, 294 U.S. 587 (1932); *Cassell v. Texas*, 339 U.S. 282 (1950); *Eubanks v. Louisiana*, 356 U.S. 584 (1958). A violation of the Fifth Amendment should stand on no different footing and similarly taints the Grand Jury process.[5]

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[5] Many state courts have routinely held that to fully effectuate the privilege against self-incrimination an indictment obtained in violation thereof must be dismissed. *Salyers v. Commonwealth*, 274 Ky. 284, 287, 118 S.W.2d 208, 210 (1938); *State v. Corteau*, 198 Minn. 433, 270 N.W. 144 (1936); *State v. Sly*, 63 S.D. 162, 257 N.W. 113 (1934); *State v. Sarcone*, 96 N.J.Super. 501, 513, 233 A.2d 406, 412 (Super. Ct. N.J. Law Div. 1967); *Jenkins v. State*, 65 Ga. App. 16, 23, 14 S.E.2d 594, 598 (1941); *Commonwealth v. Kilgallen*, 379 Pa. 315, 325-326, 108 A.2d 780, 787 (1954); *State v. Naughton*, 221 Mo. 398, 120 S.W. 53 (1909); *State v. Jennison*, 240 La. 787, 791, 125 So.2d 363, 364 (1960); *People v. Bermel*, 71 Misc. 356, 128 N.Y. Supp. 524 (Sup. Ct. Queens Co. 1911); *People v. Schneider*, 133 Colo. 173, 292 P.2d 982, 986 (1956). See Orfield, *The Federal Grand Jury*, 22 F.R.D. 343, 390; 38 A.L.R.2d 237, 294 (1954).

In this case, an indictment was returned by the same grand jury which heard petitioner testify to acts which constituted the underlying basis of the crime for which he was indicted; there is no basis for the majority's conclusion below that the matter to which he was required to testify did not affect the finding of the indictment.

First, petitioner furnished the grand jury the motive for the crime set forth in Patrolman Sewell's testimony. Indeed, Sewell never even advised the grand jury of his own knowledge that petitioner had committed the assault upon Jack Graham. It was petitioner who admitted to the grand jury that the assault had occurred and that he perpetrated it by using tire irons, thereby confirming to the grand jury that he had done the very acts which Sewell was bribed to conceal.[6]

Secondly, because petitioner corroborated Sewell's testimony in many specifics, his testimony made the latter's testimony eminently credible. For example, Sewell testified that petitioner had told him that he and LaBello had met someone in a diner who had offered them money to commit the assault and had driven them to the scene of the assault. Sewell also testified that petitioner admitted hitting Graham with the larger tire iron, while LaBello used the smaller. These facts had all been testified to by petitioner four days earlier. Petitioner further corroborated Sewell's testimony as to his opportunity to make the bribe offer on the night of his arraignment, since he acknowledged having been released on bail. The grand jury was entitled, of course, to

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[6] Although motive, as distinguished from criminal intent, is not a necessary element of the crime of bribery under New York law (former P.L. § 378)—or in fact of any crime—evidence of motive would undoubtedly make prosecution and conviction more probable. Consequently, testimony bearing upon motive would seem to be fully covered by the protections of the privilege. *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *United States v. The Saline Bank of Virginia*, 26 U.S. (1 Pet.) 100, 104 (1828).

believe Sewell without reference to the facts already testified to by petitioner. But it is not likely that they did. Indeed, it is much more probable that the coincidence of the patrolman's testimony with that given by petitioner furnished the grand jury strong reason to credit Sewell's testimony.

In addition, exceptional significance must be accorded the fact that the grand jury which was to indict petitioner had the opportunity to evaluate his character and demeanor. It cannot be easily concluded that their evaluation of him may not have had considerable bearing on their appraisal of Sewell's testimony. As four members of the D.C. Circuit have observed:

> "Mere interrogation before a grand jury may harm the accused as much as mere interrogation at a trial. Even if he makes no direct incriminating statement, there is no way to know whether in fact his appearance was incriminating in the minds of some or all the members of the Grand Jury." United States v. DeStefano, 213 F. Supp. 232, 234 (N.D. Ill. 1963). His having been brought there may arouse suspicion. His manner and voice may arouse suspicion. *Jones v. United States*, 342 F.2d 863, 868 (D.C. Cir. 1964).

Thus the conclusion of the majority below that "[w]hatever evidence may have been revealed by the appellant's testimony was wholly unsubstantial", that "the indictment was not the product of that testimony", and that "whatever testimony by appellant might be considered of some relevance to the bribery charge may properly be deemed harmless error" is not supported by the record.[1] Rather,

[1] We seriously doubt the constitutional legitimacy of a harmless error test as applied by the Court of Appeals where the privilege against self-incrimination is in issue. Since the privilege protects any testimony which may form only a link in the chain of evidence or which may in some manner lead to conviction, the extent and application of the privilege, and therefore immunity from use, does not depend upon either the importance, quality or materiality of the testimony in question. *United States v. Goldman*, 28 F.2d 424, 433

the dissenters, we believe, were correct in pointing out that "[i]t is not possible on this record, then, to insulate this testimony from the resulting indictment." Since there is a substantial likelihood that the indictment may have been partially based on testimony obtained in violation of the Fifth Amendment, the conviction should be reversed and the indictment dismissed under principles which this Court has enunciated in highly apposite situations. *E.g., Bachellar v. Maryland*, 396 U.S. 816 (1970); *Street v. New York*, 394 U.S. 576, 585-586 (1969); *Bruton v. United States*, 391 U.S. 123, 135-137 (1968); *Jackson v. Denno*, 378 U.S. 368, 389 (1964); *Stromberg v. California*, 283 U.S. 359, 367-368 (1931). Compare *Price v. Georgia*, __ U.S. __, 71 Cr.L. 3193, 3196 (decided June 15, 1970).

(D.Conn. 1928); see Gold, *Privilege Against Self-Incrimination in Federal Grand Jury Proceedings*, 24 Temp. L.Q. 395, 398 (1951). Nor does the application of the privilege depend on "an assessment of the information possessed by the government at the time of interrogation . . ." *Albertson v. Subversive Activities Control Board*, 382 U.S. 70, 81 (1965). If the evidence may be incriminatory, and if it may have been used in obtaining an indictment, the indictment must be dismissed regardless of the nature of the remainder of the evidence. *State v. Naughton, supra* fn. 5, 221 Mo. at 436, 120 S.W. at 60-63; *Commonwealth v. Kilgallen, supra* fn. 5, 379 Pa. at 327, 108 A.2d at 785; *State v. Sly, supra* fn. 5, 63 S.D. at 170, 257 N.W. at 117; *Jones v. United States*, 342 F.2d 863, 870 (D.C. Cir. 1964); *United States v. DiGrazia*, 213 F.Supp. 232, 233 (N.D.Ill. 1963).

Even if, *arguendo*, a harmless error rule was applicable, a situation where, apart from the statements of the defendant, the only proof is the testimony of a single police officer would not be one in which the improper admission of defendant's testimony would constitute harmless error.

Point II

THE INDICTMENT OF PETITIONER FOR A CRIME TO WHICH HIS COMPELLED TESTIMONY WAS DIRECTLY RELATED VIOLATED HIS PRIVILEGE AGAINST SELF INCRIMINATION AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS

A. To fully satisfy the requirements of the Fifth and Fourteenth Amendments, a grant of immunity must afford protection against indictment as to any transaction to which the compelled testimony relates.

The discussion in Point I of this brief assumed, *arguendo*, because of the peculiar circumstances of this case, that the Fifth and Fourteenth Amendments extended protection only against the actual use of compelled testimony in a criminal proceeding. However, this standard is constitutionally inadequate and petitioner was additionally protected by a total immunity from prosecution on the bribery charge, having been compelled to testify to matters relating directly thereto.

The Fifth and Fourteenth Amendments to the federal constitution require that no jurisdiction either federal or state compel testimony in the face of the privilege against self-incrimination without offering in exchange an immunity "coextensive with the privilege." *Counselman v. Hitchcock*, 142 U.S. 547, 586 (1892); *Brown v. Walker*, 161 U.S. 591 (1896); *Glickstein v. United States*, 222 U.S. 139, 141 (1911); *Murphy v. Waterfront Commission*, 378 U.S. 52, 54 (1964); *Malloy v. Hogan*, 378 U.S. 1 (1964).[8]

[8] Since the *Counselman* and *Brown* decisions, the issue of the scope of the immunity necessary has not squarely been presented to the Court. Rather, the Court's decisions have been primarily concerned with whether the privilege was properly invoked in the first instance, [see, *e.g.*, *Rogers v. United States*, 340 U.S. 367 (1951)], and with the application of the federal privilege where state action was involved [see, *e.g.*, *United States v. Murdock*, 284 U.S. 141 (1931); *Feldman v. United States*, 322 U.S. 487 (1944); *Knapp v. Schweitzer*, 357 U.S. 371 (1958)]. This latter issue has now been

The New York Court of Appeals held in this case that the constitutional privilege could be abrogated if a witness was protected from the use of his testimony or any leads derived therefrom in any criminal proceeding against him.[9] Under the holdings of this Court such a limited view of the privilege is without basis, for the Constitution requires that a witness be given absolute immunity from prosecution for any matter or transaction to which the compelled testimony relates.

The transactional immunity standard was first enunciated by this Court in *Counselman v. Hitchcock*, *supra*, 142 U.S.

conclusively resolved in *Malloy v. Hogan*, 378 U.S. 1 (1964), and *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964), holding respectively that the Fifth Amendment privilege applies to the states through the Fourteenth Amendment, and that a witness who claims the privilege in one jurisdiction has, at the very least, protection from the use of his compelled testimony or its fruits in a prosecution brought in another jurisdiction. *Malloy v. Hogan*, *supra*, 378 U.S. at 8; *Murphy v. Waterfront Commission*, *supra*, 378 U.S. at 79.

In *Ullmann v. United States*, 350 U.S. 422 (1956), the Court was faced with the question whether any immunity statute, or at least one which does not protect against the disgrace or infamy which may be attendant upon testifying, is constitutionally adequate. As in *Brown v. Walker*, 161 U.S. 591 (1896), the Court ruled that these consequences are not covered by the privilege. 350 U.S. at 430-431.

The more basic question, the scope of immunity which must be provided by the same jurisdiction which has compelled a witness to give up his privilege against self-incrimination, remains for resolution in this case. See, *Stevens v. Marks*, 383 U.S. 234, 244-245 (1966).

[9]The Court of Appeals has subsequently reversed itself on this issue. In *Matter of Gold v. Menna*, 25 N.Y.2d 475, 307 N.Y.S.2d 33 (1969), the court held that New York's immunity statute does provide for transactional immunity and that any language to the contrary in petitioner's case is overruled. However, the court noted that its decision in petitioner's case was nonetheless correct because it felt that petitioner had not been indicted for a transaction to which his testimony related. As the court thus held that petitioner's conviction was proper, the case has not become academic in its posture before this Court. See Appendix A.

547, and has not been departed from since, although some members of the Court have expressed doubts about its necessity. *Murphy v. Waterfront Commission, supra*, 378 U.S. at 92-93, 100, 106 (Mr. Justice White, concurring); *Stevens v. Marks, supra*, 383 U.S. at 249-250 (Mr. Justice Harlan, concurring in part and dissenting in part). What has happened to petitioner in this case should resolve those doubts in favor of the *Counselman* rule.

The *Counselman* litigation was the result of a Congressional investigation into bribery and corruption among members of the House of Representatives. In order to obtain testimony, Congress passed a bill providing for immunity as to transactions to which compelled testimony related. 11 Stat. 156. However, the act resulted in efforts by congressmen and others to testify and obtain the statutory immunity, and five years later new legislation was considered to avoid this problem. See Congressional Globe 37th Cong., 2d Sess. (1862), p. 364. The result was section 860 of the Revised Statutes (12 Stat. 333), which provided:

> No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence or in any manner used against his property or estate, in any Court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture.

This Court held the statute unconstitutional because it did not protect a witness against the use of his testimony to search out other testimony or witnesses against him, and in so doing, stated what it deemed to be the extent of the protection afforded by the privilege:

> We are clearly of the opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States. Section 860 of the Revised Statutes does not supply a complete protection from all the

> perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. In view of the constitutional provision, a statutory enactment to be valid, must afford *absolute immunity against future prosecution for the offence to which the question relates.* . . . Section 860, moreover, affords no protection against that use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime and of sources of information which may supply other means of convicting the witness or party. *Counselman v. Hitchcock, supra,* 142 U.S. at 585-586 (emphasis added).

Thus the Court considered an immunity from the use of testimony to search out other testimony to be but one test of a constitutionally adequate immunity statute and concluded that transactional immunity was constitutionally required.[10]

The Court next considered the constitutionality of a federal immunity statute four years later in *Brown v. Walker, supra,* 161 U.S. 591. In response to the holding of *Counselman,* Congress had passed the Act of February 11, 1893, c. 83, 27 Stat. 443, which provided:

> But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise . . .

In analyzing this language in light of the standards of *Counselman,* this Court stated that "The inference from [*Counselman*] is that, if the statute does afford such immu-

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[10] In *Counselman,* it was argued that the "amnesty" provided by state statutes of which this Court approved (Virginia, Massachusetts and New Hampshire) was broader than the protection required by the federal constitution because of differences in constitutional language and that the broader standard should not be adopted as the federal rule. The Court rejected this contention. 142 U.S. at 586.

nity against future prosecution, the witness will be compellable to testify." 161 U.S. at 594. The Court reasoned that the purpose of the privilege was "to secure the witness against a criminal prosecution, which might be aided directly or indirectly by his disclosure" and that "if no such prosecution was possible, in other words if his testimony operate as a complete pardon for the offense to which it relates, a statute absolutely securing to him such immunity from prosecution would satisfy the demands of the clause [privilege against self-incrimination] in question." 161 U.S. at 595. Since the statute did in fact provide this protection, the witness was required to testify.

The four dissenting justices, far from finding that the immunity extended by the statute was excessive, were of the opinion that the scope of the immunity even as declared by the majority was not sufficiently broad. Thus, Mr. Justice Shiras, joined by Mr. Justice Gray and Mr. Justice White, felt that the immunity statute did not offer sufficient protection because (1) the protection must be against prosecution in the first instance and the immunity offered could only provide a defense to an indictment, (2) the witness was subjected to the dangers of a perjury prosecution, whether well-founded or not, and (3) the witness might still be subject to state prosecution. 161 U.S. at 621-623. Mr. Justice Field felt that in addition to protection from prosecution, a constitutionally adequate immunity statute must protect a witness from infamy and disgrace. 161 U.S. at 631.

Even prior to this Court's holding in *Malloy v. Hogan*, *supra*, 378 U.S. 1, the large majority of state legislation[11]

[11] It is noteworthy that New York is one of those states which has traditionally afforded transactional immunity. Earlier New York legislation provided for immunity only from use of the compelled testimony itself. *People v. Kelly*, 24 N.Y. 74 (1861). However, following the *Counselman* decision, the New York statute was amended to provide transactional immunity. *Doyle v. Hofstadter*, 257 N.Y. 244, 177 N.E. 489 (1931). As the decision in *Matter of Gold v. Menna*, *supra* fn. 9, makes clear, the New York statutory scheme presently provides transactional immunity.

provided for absolute immunity against prosecution in language which has become typically known as transactional immunity ["immunity from prosecution for or on account of any matter or transaction to which the testimony relates"]. The same is true of almost all federal legislation.[12] See, *Ullmann v. United States*, 350 U.S. 422, 438 (1956); 53 A.L.R.2d 1030, 1032 (1957); 8 Wigmore, EVIDENCE, sec. 2281, p. 493 (McNaughton rev. 1961); Note, *The Federal Witness Immunity Acts in Theory and Practice: Treading the Constitutional Tightrope*, 72 Yale L.J. 1568, 1579 (1963); Wendel, *Compulsory Immunity Legislation and the Fifth Amendment Privilege: New Developments and New Confusion*, 10 St. Louis L.J. 327 (1968). In addition, the Commissioners on Uniform State Legislation have suggested transactional immunity as the standard to be followed by the states. Model State Witness Immunity Act, 9 U.L.A. 186, *et seq.* (1957).[13]

This Court has recognized that the transactional immunity statute upheld in *Brown* "has become part of our constitutional fabric . . ." [*Ullmann v. United States, supra*, 350 U.S. at 438], and that standard has been frequently reaffirmed by this Court. *Hale v. Henkel*, 201 U.S. 43, 67 (1906); *United States v. Murdock*, 284 U.S. 141, 149 (1931) ["The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."]; *United States v. Monia*, 317 U.S. 424, 428 (1943); *Smith v. United States*, 337 U.S. 137, 147 (1949).

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[12] Appendix B to this brief contains a listing of federal and state immunity statutes.

[13] The Commissioners have recommended adoption of this legislation as providing the bare minimum required by the federal constitution in light of *Counselman*. 9 U.L.A. at 195.

The rationale behind this rule is simple. If a witness is immune from prosecution, then his testimony can no longer incriminate him, and therefore the Fifth Amendment no longer applies. *Hale v. Henkel, supra,* 201 U.S. at 67; *Brown v. Walker, supra,* 161 U.S. at 597. This same analysis has been applied by the state courts in determining the validity of immunity statutes under state constitutional law.[14]

The soundness of the *Counselman* rule affording full protection is especially demonstrated by the circumstances of this case. At the time petitioner was called before the grand jury, the District Attorney already possessed evidence that he had committed bribery. In fact, such evidence had been available for a year. It is evident from the remarks of District Attorney Koota at sentence that the threat of punishment for the bribery had been used in an informal manner to compel petitioner to speak.[15] As other devices did

[14] See, *e.g., Ex Parte Cohen,* 104 Cal. 524, 38 Pac. 364, 365 (1894); *Hirsch v. State,* 8 Baxt. (67 Tenn.) 89, 92 (1874); *Doyle v. Hofstadter, supra* fn. 11, 257 N.Y. at 251; 177 N.E. at 491. See also, *People v. Boyle,* 312 Ill. 586, 600, 602, 144 N.E. 342, 348 (1924); *In re Watson,* 293 Mich. 263, 276, 291 N.W. 652, 657 (1940); *Brown v. State,* 233 Md. 288, 196 A.2d 614, 618 (1964); *State ex rel. North v. Kirtley,* 327 S.W.2d 715, 718 (Mo. 1936); *State v. Nowell,* 58 N.H. 314 (1878). See also 8 Wigmore, EVIDENCE, sec. 2281, p. 491 (McNaughton rev. 1961) ["A legislative provision, therefore, providing *amnesty for an individual offender* or class of offenders *who shall disclose the facts of the offense* upon inquiry is effective to remove the criminality of the offense, and the privilege thereby ceases as to the person so disclosing . . ." (emphasis in original)]; McCormick on Evidence, 135, p. 284 (1954) ["If at the time of the claim of privilege, the liability of the witness to be convicted of the offense inquired about has been terminated, the danger against which the privilege is directed does not exist, and the claim of privilege falls."].

[15] The District Attorney's attempts to compel petitioner to speak are amply evidenced by his remarks at petitioner's sentencing (R. 102-104):

> . . . It was perfectly obvious to me and to my associates, who were not altogether without experience in the field of criminal practice, that there was something behind this as-

not prove successful, the District Attorney resorted to the contempt power of the grand jury, giving in return what turned out to be an illusory grant of immunity. Not satisfied with petitioner's answers before the grand jury the Dis-

> sault [on Jack Graham] that was deeper and required further investigation.
>
> So we moved this assault case for trial, and the defendants pleaded guilty and were sentenced. Before the sentence, we asked the Court—it was Judge Barshay, I recall—to withhold the execution of the sentence to afford these defendants an opportunity to cooperate with me in my office, so that we could find out how high this thing went; who put these men up to committing this assault.
>
> . . . But they were intransigent. The sentence was executed, and we then brought them back to the grand jury and interrogated them in the grand jury, and there they told us a story that comes right out of Grimm's Fairy Tales.
>
> * * *
>
> Our attention had already come to the subject of the bribe, or attempted bribe that had been committed with reference to Patrolman Sewell, but in order to get at the bottom of this; to get at the higher-ups who were responsible for his assault, I would have gone to the extent of not prosecuting these individuals for the bribery, and give them immunity against that, if they would tell us who put them up to this; and I would have seen that clemency was exercised, if possible, even in the assault case, because it was more important for the interest of justice that we ascertain the identity of these individuals.
>
> * * *
>
> Now, we are confronted again with this question as to whether these men will tell us the identity of the person who put them up to this assault; but there is even something that is deeper at this moment than the identity of that individual, because we have some evidence that another person in the New York Housing Authority, whom I will not identify at the moment, endeavored to get Patrolman Sewell to accept the bribe that had been offered by these defendants and to go along with them in the attempt to kill this assault case, and it is the identity of this other individual and the part that he played in this attempted bribe that we are seeking to ascertain.
>
> * * *
>
> The sentence was on two weeks ago, as I understand it, and I think Mr. Schmier made our position clear. They had two weeks within which to come to us and tell us who was

trict Attorney, by having Patrolman Sewell testify, arranged to have petitioner indicted for bribery. This, after petitioner had been told he was being fully protected and after he had insisted that he had given all the information he had. Such an abuse of the use of the contempt power can be curbed only if the state is required to give, in exchange for compelled testimony, the fullest amount of protection at its disposal.

The protection afforded by the state when it chooses to deprive a man of his constitutional right to silence must be of the fullest and most effective sort. To compel a man to speak, and then prosecute him when his answers are unsatisfactory, as was done here, is an unconscionable abuse of governmental power. The Fifth Amendment privilege can be fully effectuated only if any aspect of criminality is removed from the compelled testimony and the witness is protected from prosecution for all matters relating to his testimony.

B. *The crime for which petitioner was indicted related directly to a transaction to which he testified, and therefore his indictment was barred by the immunity to which he was constitutionally entitled.*

Petitioner testified that he had committed and been arrested for an assault on Jack Graham with tire irons. Patrolman Sewell testified that he had arrested petitioner for the assault and had recovered the tire irons. He further testified that petitioner had offered him a bribe to destroy the weapons and change his testimony. The interrelationship between the matters to which petitioner testified and the

behind all of this, and they are mute. Their lips have been effectavely sealed.

I am going to ask that the Court, in view of all these circumstances, impose the kind of sentence to run in addition to the sentence that has been impose [sic] upon them for the assault . . .

crime for which he was indicted is patent and falls within the scope of transactional immunity to which petitioner is entitled.

In *Heike v. United States*, 227 U.S. 131 (1913), the standard to be applied in determining whether an indictment arises out of the same transaction concerning which testimony has been given was at issue. This Court found that

> [t]he evidence did not concern any matter of the present charge. Not only was the general subject of the former investigation wholly different, but the specific things testified to had no connection with the facts now in proof much closer than that they all were dealings of the same sugar company. . . . The mere fact that a part of the sugar embraced in the table was the sugar falsely weighed did not make the table evidence concerning the frauds. The same consideration shows that it did not tend to incriminate the witness. It neither led nor could have led to the discovery of his crime. 227 U.S. at 143.
>
> When the statute speaks of testimony concerning a matter it means concerning it in a substantial way. 227 U.S. at 144.

Unlike *Heike*, petitioner's testimony was substantially connected with the bribery charge. As the dissenting judges below pointed out,

> The relevancy of their testimony to the charge on which they were indicted is manifest. That they had committed the crime concerning which they sought to bribe the policeman not to testify was a basic premise of the bribery. The weapons they told the Grand Jury they had used were vital to the policeman's testimony that they had attempted to bribe him "to get rid of the evidence". (R. 121)

Thus, the underlying subject matter of the indictment was identical with the subject matter of petitioner's testimony. See *Lumber Products Ass'n v. United States*, 144 F.2d 546, 553 (9th Cir. 1944).

Further, petitioner's testimony supplied the motive for the bribery charge, and thus constituted a strong link in the chain of evidence against him. See *Smith v. United States*, 337 U.S. 137, 148-149 (1949).

Because of the substantial relationship between petitioner's testimony and the bribery for which he was indicted, petitioner was constitutionally entitled to immunity from prosecution for that bribery.

Point III

THE DENIAL OF PETITIONER'S REQUEST TO CONSULT WITH COUNSEL IN CONNECTION WITH HIS TESTIMONY BEFORE THE GRAND JURY DEPRIVED HIM OF HIS RIGHT TO COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS.

After petitioner was advised that he had been granted immunity he stated he would answer the questions but asked to speak to his lawyer first. He was told by Assistant District Attorney Panzarella that "there is no reason for your conferring with your attorney . . ." (R. 34). In view of petitioner's position at the time, the refusal to allow him to consult with counsel deprived him of needed legal advice at a critical stage of the proceedings and was thus a denial of his constitutional right to counsel.

This court has recognized the right to counsel at any critical stage of a criminal proceeding that is, whenever what occurs may affect what happens to the defendant subsequently. *Hamilton v. Alabama*, 368 U.S. 52, 54 (1961); *White v. Maryland*, 373 U.S. 59 (1963); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *United States v. Wade*, 388 U.S. 218 (1967); *Coleman v. Alabama*, ___ U.S. ___, 7 CrL 3121 (decided June 22, 1970). The rationale of these decisions required that the right to counsel be extended to the grand jury proceedings as well. See, *The Supreme Court: 1963 Term*, 78 Harv. L. Rev. 143, 222; Meshbesher, *Right of Counsel Before Grand Jury*, 41 F.R.D. 189, 193-194.

A witness before a grand jury faces numerous choices which may substantially affect his future legal position. In the first instance he must decide whether to plead his constitutional privilege and when. His decision on this question may well determine whether he will be entitled to protection at all and if so, how much. *People v. Ianniello*, 21 N.Y.2d 418, 424-425, 288 N.Y.S.2d 462 (1968), cert. den. 393 U.S. 827. The questions of when the privilege must be pleaded and whether a particular response operates as a waiver are often difficult ones for the lawyer, let alone the layman.

Further, the witness, even if granted immunity, cannot be protected against non-criminal consequences which may flow from his testimony, such as loss of employment or deportation. *Ullmann v. United States*, 350 U.S. 422, 430-431 (1956); *Brown v. Walker*, 161 U.S. 591, 600 (1896). A witness is entitled to be fully aware of all the possible consequences of his testimony before he decides whether to accept the immunity grant or to risk a contempt conviction. The witness should also be fully aware of the possibilities of a perjury conviction should he answer falsely or a contempt conviction should he answer evasively, and the penalties which would result.[16]

Had petitioner been permitted to consult with counsel outside the grand jury room, the grand jury proceedings would in no way have been prejudiced. The purpose of secrecy in the grand jury is

> (1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclos-

[16] Assistant District Attorney Panzarella never advised petitioner of his possible liability for perjury or contempt prosecutions.

> ures by persons who have information with respect to the commission of crimes; (5) to protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt." *United States v. Procter & Gamble Company*, 356 U.S. 677, 681, n. 6 (1958), citing *United States v. Rose*, 215 F.2d 617, 628-629 (3rd Cir. 1954).

Also see 4 Wharton's Criminal Procedure, § 1719, p. 488 (1957); Meshbesher, *supra* at 207; Orfield, *The Federal Grand Jury*, 22 F.R.D. 343, 403.

None of these considerations would have been adversely affected by honoring petitioner's request. Petitioner did not ask the right to have counsel present either during the taking of testimony of other witnesses or during the deliberations and decisions of the grand jurors. All that he requested was the right to confer with his own lawyer during his own testimony concerning his rights. The refusal to permit him to do so advanced none of the purposes of grand jury secrecy and served only to deprive him of legal advice at a critical time.

Although New York allows a grand jury witness to consult with counsel [*People v. Iannielo*, *supra*, 21 N.Y.2d 418, 288 N.Y.S.2d 462],[17] the majority of the Court of Appeals found that petitioner's right to counsel had not been violated because his answers "did not form the basis of the present indictment", and thus petitioner had not been prejudiced.

[17] Several jurisdictions in addition to New York have recognized that the ability of a grand jury witness to consult with counsel is desirable. *United States v. Irwin*, 354 F.2d 192, 199 (2nd Cir. 1965); *Kitchell v. United States*, 354 F.2d 715, 720 (1st Cir. 1965); Utah Code Anno. 77-19-3. Also see *Sheridan v. Garrison*, 273 F. Supp. 673, 678 (E.D.La. 1967).

This was error because petitioner was clearly prejudiced by the denial of his request to consult with counsel. Given the confusion surrounding the meaning of the New York immunity statute, as evidenced by the fact that the Court of Appeals, in the short period of seven months, overruled its initial interpretation of the scope of the statute as applied to petitioner [compare the decision below with *Matter of Gold v. Menna, supra*, 25 N.Y.2d 598, 307 N.Y.S.2d 331], petitioner needed advice from his own lawyer as to the scope of his protection. Compare *Von Moltke v. Villies*, 332 U.S. 708, 725 (1948); *United States ex rel. Vanderhost v. LaVallee*, 417 F.2d 411 (2nd Cir. 1969), cert. den. *sub nom. McMann v. Vanderhost*, 397 U.S. 925 (1970). What in fact happened to petitioner, compared with Mr. Panzarella's bland assurances that petitioner was being "fully protected" and that he "cannot be prosecuted", is clear proof that counsel's advice was essential.

At the least, counsel could have conferred with Mr. Panzarella to determine what his intentions were with respect to the bribery charge of which all parties were aware, and whether the prosecutor considered that charge to be covered by the immunity grant. Even assuming the prosecutor did not consider petitioner entitled to immunity from prosecution for the bribery charge on the basis of his grand jury testimony, counsel may very well have been in a position to negotiate such protection with the district attorney. If in fact such discussions proved unfruitful, counsel could have made petitioner aware of the extent of the protection he would receive, so that he could have made an intelligent choice between testifying and subjecting himself to a contempt prosecution. Certainly in the face of Mr. Panzarella's misleading assurances, he could not make such a decision without the benefit of advice from counsel.

CONCLUSION

Wherefore, for the foregoing reasons, petitioner prays that the judgment below be reversed.

Respectfully submitted,

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APPENDIX A

DECISION OF NEW YORK COURT OF APPEALS IN *MATTER OF GOLD v. MENNA*, 25 N.Y.2d 475 (1969)

Jasen, J. The primary issue in this case is whether a witness gains an immunity from prosecution for murder, even though such crime is not one of the offenses specified in the statute for which immunity may be conferred, where the Grand Jury is carrying on an investigation related to conspiracy to commit murder and other crimes.

The Fourth Additional Kings County Grand Jury of May, 1968 was impaneled to conduct an investigation into a conspiracy to commit murder and other crimes in the County of Kings in connection with an effort by unnamed persons to succeed one Joseph Bonanno as head of an organized crime syndicate.

On November 7, 1968, the appellants, having been previously subpoenaed, appeared before the Grand Jury and refused to answer any questions on the ground that their answers might be self incriminatory. The District Attorney, believing that the appellants could give useful evidence bearing on the conspiracy to commit murder and could identify some or all of the co-conspirators and perpetrators thereof, expressly asked the Grand Jury to grant each appellant immunity pursuant to sections 619-c and 619-d of the Code of Criminal Procedure. Thereafter, on the same date, November 7, 1968, appellants were granted immunity. However, they still refused to answer any questions. When they persisted in their refusal to answer, the District Attorney, by order to show cause, moved in Supreme Court, Kings County, for an order directing each of the appellants to return before the Grand Jury and answer all legal and proper questions propounded; or, in the event of a refusal to obey such direction, to show cause why each should not be punished for contempt pursuant to section 750 of the Judiciary Law.

Subsequently, in March, 1969, after appearing with counsel, the appellants were ordered by the court to return before the Grand Jury and answer the questions propounded. The witnesses once again refused to answer, and thereupon were adjudged in contempt of court in violation of section 750 of the Judiciary Law. Before being sentenced, they were given an opportunity to purge their contempt, which they refused.

Each appellant was sentenced to the Civil Prison of the City of New York for a term of 30 days and fined $250 or an additional 30 days in default of payment, with the exception of appellant Menna who only received a 30 day prison term. These appeals have been consolidated as they involve identical questions of law.

On this appeal appellants' primary argument is that the Grand Jury had no power to grant immunity in the pending investigation because the investigation centered on a series of murders and assaults, for which crimes the Grand Jury has no statutory authority to grant immunity.

Section 50-b of subdivision 3 of the Code of Criminal Procedure denominates, by reference to specific sections of the Penal Law, the offenses for which a Grand Jury may confer immunity; and murder and assault are not included. However, the statute does specifically provide for the conferring of immunity in the case of a Grand Jury investigation into a conspiracy to commit murder. (Code Crim. Pro., § 50-b, subd. 3; Penal Law, § 105.15.)

There is no doubt that the investigation here focused on such a conspiracy. The record discloses that the Grand Jury was investigating a series of incidents following, and possibly related to, the kidnapping of Joseph Bonanno on October 21, 1964, such as a shooting on Troutman Street, in Brooklyn, on January 28, 1966; the shooting of Frank Mari, in Brooklyn, in July, 1966; the murder of Thomas and James D'Angelo and Frank Telleri, in Queens, on November 10, 1967; the shooting of Peter Crociata, in Brooklyn, on March 4, 1968; the murder of Sam Perrone, in

Brooklyn, on March 11, 1968; the murder of Michael Consolo, in Queens, on April 1, 1968; the shooting of William González, in The Bronx, on April 5, 1968; the shooting of Francesco Crociata, in Brooklyn, on April 17, 1968; the murder of Thomas Zummo, in Queens, on February 5, 1969, and other related crimes.

In addition to the afore-mentioned murders, the Grand Jury was also investigating a number of shootings and assaults where the victims survived. Indeed, in those instances, the crime of conspiracy to commit murder may well have been perpetrated, although the completed crime of murder was not.

It is certainly proper and within the power of a Grand Jury to investigate these series of killings and assaults to determine whether they were committed in furtherance of a conspiracy to assume control of an organized crime syndicate in Kings County. Clearly, the statutory purpose of granting immunity to one person so as to gain evidence against others mandates that the Grand Jury be allowed to grant immunity here.

The fact that a crime, such as murder, which is not included in the statute may be mentioned by a witness testifying with immunity, should not change this conclusion. To be sure, there is always the possibility that in any Grand Jury investigation where immunity is granted, crimes not specifically enumerated in the statute may be revealed. However, to allow this fact to repeatedly void the grant of immunity would be illogical and contrary to the intent of the Legislature.

In *Matter of Grand Jury [Cioffi]*, (8 NY 2d 220 [1960]), we rejected a similar contention, stating at pages 225-226: "[A]ppellants say that they could not be compelled to testify under these circumstances because the Grand Jury was investigating crimes * * * which are not among the crimes as to which the Penal Law authorizes an express grant of immunity. The answer to that is that * * * appellants would have gotten complete immunity as to any and all crimes to which their testimony related."

As a subsidiary issue, appellants maintain that the immunity granted by the Grand Jury is limited and is, therefore, not coextensive with their privilege against self incrimination as required by *Counselman v. Hitchcock* (142 U.S. 547), where the court declared that "a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offence to which the question relates" (p. 586). Assuming, because of the views expressed in *Gardner v. Broderick* (392 U.S. 273) and *Murphy v. Waterfront Comm.* (378 U.S. 52) that this may no longer be so, resolution of the issue would not affect the result under the statutes of this State. For, despite the statements to the contrary in *People v. LaBello* (24 NY 2d 598), the applicable immunity statute provides, in so many words, that a person, upon whom immunity is conferred, "shall not be prosecuted or subjected to any penalty * * * for or on account of any transaction, matter or thing concerning which * * * he gave answer or produced evidence" (Code Crim. Pro., § 619-c, subd. 2). The court has, indeed, expressly recognized that this Code provision and its identical provision in the former Penal Law (§ 2447), granted a transactional immunity from prosecution for any crime revealed by a witness' testimony before a Grand Jury. (See *People v. Iannello*, 21 NY 2d 418, 425, cert. den. 393 U.S. 827; *People v. Tomasello*, 21 NY 2d 143, 149; see, also, 1942 Report of N.Y. Law Rev. Comm., pp. 386-390; N.Y. Legis. Doc., 1942, No. 65 [I], pp. 50-54.) We now reaffirm this interpretation and hold that to whatever extent *People v. LaBello* (24 NY 2d 598, *supra*) is inconsistent with this conclusion, it is overruled.[1]

[1] This does not, however, mean that *LaBello* was incorrectly decided. On the contrary, the decision actually rested on the fact that the defendants in that case, according to the majority view, were not prosecuted in the language of the statute "for or on account of any transaction, matter of thing concerning which * * * [they] gave answer or produced evidence" (former Penal Law, § 2447, now Code Crim. Pro., § 619-c, subd. 2); in other words, they gave no testimony which related or pertained to the offense for which they were prosecuted and of which they were convicted.

In the present case, therefore, the appellants obtained an immunity from prosecution for any and all crimes to which their testimony might relate and, accordingly, they could not assert the privilege against self incrimination and refuse to testify. It follows that the orders adjudging them in contempt were eminently proper.

Also before us is the question of whether the appellants were entitled to a hearing on the relevancy of the questions asked them since the trial court ruled the questions asked were relevant without conducting a formal hearing. In *Matter of Kuota v. Colombo* (17 NY 2d, 147 [1966], cert. den. 384 U.S. 1001), we held that the relevancy of the questions need not be conclusively established and only an intelligent estimate of relevancy need be made. (See, also, *Matter of Spector v. Allen*, 281 N.Y. 251 [1939].)

Applying this test to the record before us, there can be no doubt that there is such an element of relevancy here. Appellants were asked if they knew the murder victims or Joe Bonanno. Since both the series of slayings and the conspiracy to succeed Bonanno were the subject of investigation by the Grand Jury, the *Colombo* standard has been clearly met.

The other contentions of the appellants are equally without merit. The question as to whether appellants are targets of this investigation is immaterial since this court has stated many times that a person has no right to remain silent after a grant of immunity even if one is the target of the investigation. (*People v. LaBello, supra; People v. Ianniello, supra; People v. Breslin*, 306 N.Y. 294 [1954].) The appellants' argument that they could not be punished for contempt because it was not committed in the immediate view of the court is also specious. Section 750 (subd. 3) of the Judiciary Law allows a court to hold a person in contempt for disobedience of its lawful mandate (i.e., to testify before the Grand Jury) and section 750 (subd. 5) allows punishment for failure to answer any legal and proper interrogatories.

Finally, appellants complain that they were illegally before the Grand Jury since they were not served with a subpoena to appear on the specific date on which they were held in contempt (although a subpoena had been issued earlier) as was required in *Matter of Spector v Allen* (*supra*).

Appellants' reliance on *Matter of Spector v Allen* (*supra*) is misplaced. *Spector* required a subpoena to be served because the court was concerned that a clear formal command to testify was not given under the facts of that case. Here the appellants were in fact served with a subpoena to appear before the Grand Jury. After refusing to answer questions put to them, they were granted immunity and again refused to answer questions. The court then formally ordered appellants to testify. After discussion with counsel, they informed the court that they would not answer the questions, at which time the court held them in contempt. We find that the appellants were afforded ample notice of the proceedings and fully apprised of the nature of the Grand Jury inquiry. Their fundamental rights were not violated.

Accordingly, the orders of the Appellate Division should be affirmed.

Chief Judge Fuld and Judges Burke, Scileppi, Bergan, Breitel and Gibson concur.

In each case: Order affirmed, without costs.

APPENDIX B

SURVEY OF STATE AND FEDERAL IMMUNITY-LEGISLATION

ALABAMA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Code of Ala.

Tit. 29, § 111	grand jury testimony violation of liquor laws
Tit. 48, § 67	public service commission

B. Immunity from use of compelled testimony.

Code of Ala.

Tit. 9, § 50	gambling and wagering contracts-interrogatories of parties in action for recovery of money

ALASKA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Alas. Stat. 1962 Anno.

Workmen's Comp., § 23.20.70	workmen's compensation board
Banks and Fin. Inst., § 06.05.020	hearings

B. Immunity from prosecution limited to subject matter of proceeding.

Alas. Stat. 1962 Anno.

Crim. Law, § 11.60.150	gambling prosecutions

ARIZONA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Ariz. Rev. Stats.	
Const. Art. 2, § 49	bribery prosecutions
§ 4-248	liquor laws
§ 40-244	public utilities and carriers
§ 44-1660	bucket shop prosecutions

ARKANSAS

A. Immunity from prosecution for transaction to which compelled testimony relates.

Ark. Stat. Anno.	
66-2122	insurance commission
66-3014	unfair trade practices and frauds
67-1253(d)	securities commission
73-228	public utilities
81-1114(j)	employment security act
84-105	public service commission property and privilege tax laws

B. Immunity from use of compelled testimony.

Ark. Stat. Anno.	
41-4120	treason prosecutions
70-310	defendant or witness for state in civil actions under unfair trade practices laws

CALIFORNIA

A. Immunity from prosecution for transaction to which compelled testimony relates.

West's Ann. Penal Code	
§ 1324	grand jury and criminal prosecutions
West's Ann. Bus. & Prof. Code	
§ 16758	restraint of trade proceedings
§ 17087	unfair trade practices proceedings
West's Ann. Gov. Code	
§ 9410	legislative hearings
§ 18677	civil service commission
West's Ann. Corp. Code	
§ 25531(c)	investigations into fraudulent securities practices
West's Ann. Ins. Code	
§ 764	unlawful rebates
§ 784	misrepresentation in policies
§ 1843	regulation of life insurance analysts
§ 11107	regulation of fraternal benefit societies
§ 12924(b)	insurance commissioner
West's Ann. Pub. U. Code	
§ 4637	regulation of for-hire vehicles
§ 5258	regulation of household goods carriers
West's Ann. Unemp. Ins. Code	
§ 1955	unemployment compensation hearings
West's Ann. Water Code	
§ 1106	state water resources control board

B Immunity from use of compelled testimony

West's Ann. Gov't Code

§ 9054 crimes against legislative power

COLORADO

A Immunity from prosecution for transaction to which compelled testimony relates

Colo. Rev. Stat. 1963

§ 7-3-19(4)	Marketing Act of 1939; commissioner of agriculture
§ 13-19-1-7(1)	funeral contract trust funds
§ 40-9-12	prostitution
§ 49-2-13	election law
§ 49-22-118	municipal election law
§ 49-24-16	other elections
§ 49-28-142	elections
§ 100-6-8	oil and gas conservation act
§ 12-9-3(20)	bingo and raffles licensing
§ 13-8-29	tax commission
§ 154-1-18	criminal proceedings generally

CONNECTICUT

A Immunity from prosecution for transaction to which compelled testimony relates

Gen. Stat. of Conn. (Rev. of 1958)

§ 31-98	board of mediation and arbitration labor relations
§ 31-108	labor relations act
§ 31-128(f)	commission on civil rights; fair employment practices
§ 52-358	testimony by mother in paternity proceedings

§ 53-276	gaming houses
§ 54-85	bribery at elections

B. Immunity from use of compelled testimony.

Gen. Stat. of Conn. (Rev. of 1958)

§ 17-2a	welfare department
§ 22-228	milk industry regulation
§ 30-8	liquor control act
§ 51-81	investigations of bar applicants
§ 52-398	enforcement of judgments; examination of judgment debtor

DELAWARE

A. Immunity from prosecution for transaction to which compelled testimony relates.

Delaware Code

11 Del. C. § 3508	any criminal action or grand jury investigation
18 Del. C. § 331	insurance code; hearings before commissioner
26 Del. C. § 187	public service commission

B. Immunity from use of compelled testimony.

Del. Const., Art. 5, § 7	election offenses (testimony of accused not compelled)

FLORIDA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Fla. Stat. Ann.

§ 366.09	public utilities commission
§ 443.12(10)	industrial commission—unemployment compensation

B G...

§ [illegible]	state fire marshal
§ [illegible]	liquor law violations
§ [illegible]	insurance commissioner
§ [illegible]	treason
§ [illegible]	bribery
§ [illegible]	instigation of litigation
§ [illegible]	prosecutions for bribery, burglary, larceny, gaming, liquor laws

B **Immunity from use of compelled testimony**

Ala Stat Ann

§ [illegible]	examination of judgment debtor (compelled to answer only questions which might incriminate as to fraud)
§ [illegible]	public service commission
§ [illegible]	national security investigations by federal officials

C **Immunity from prosecution limited to subject matter of proceeding**

Ala Stat Ann

§ [illegible]	election offenses
§ [illegible]	prosecutions for combinations in restraint of trade

GEORGIA

A **Immunity from prosecution for transaction to which compelled testimony relates**

Ga Code Ann

Tit [illegible] § [illegible]	public service commission

HAWAII

A. Immunity from prosecution for transaction to which compelled testimony relates.

Haw. Rev. Stat.

§ 431-54	insurance law
§ 708-8	conspiracies
§ 712-15	gambling

IDAHO

A. Immunity from prosecution for transaction to which compelled testimony relates.

Idaho Code

18-1308	bribery
23-807	alcoholic beverages
48-117	antitrust law
48-409	unfair sales act, parties to civil action

B. Immunity from use of compelled testimony.

Idaho Code

18-2204	duels

ILLINOIS

A. Immunity from prosecution for transaction to which compelled testimony relates.

Smith-Hurd Ill. Ann. Stat.

ch. 5, § 160	director of agriculture
ch. 38, § 106-1	any investigation or trial
ch. 38, § 203-14	investigation commission (no compulsion if reasonable chance of prosecution in other state or by United States)

[illegible]	department of revenue [illegible] fuel act
[illegible]	unemployment compensation
[illegible]	housing development authority
[illegible]	redevelopment commission
[illegible]	insurance solicitors
[illegible]	insurance code
[illegible]	commerce commission
[illegible]	department of revenue
[illegible]	cigarette tax act
[illegible]	cigarette use tax act
[illegible]	messages tax act
[illegible]	gas revenue tax act
[illegible]	public utilities tax

B Immunity from prosecution for matters revealed in testimony

Smith-Hurd Ill Ann Stat

ch [illegible]	uniform reciprocal enforcement of support testimony of obligee
ch [illegible]	abatement of public nuisances testimony of defendant

INDIANA

A Immunity from prosecution on account of answer given

Burns Ind Stat Ann

[illegible]	any criminal proceeding

B Immunity from prosecution for offense disclosed

Burns Ind Stat Ann

[illegible]	securities law

C Immunity from prosecution for any offense inquired about

Burns Ind Stat Ann

[illegible]	combinations in restraint of trade civil actions

D. Immunity from use of compelled testimony

Burns Ind. Stat. Ann.

29-3711	election offenses

IOWA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Iowa Code Ann.

96.11(10)	investigations by employment security commission
99B.5, 99B.10	prosecutions for gaming, lotteries, pools and trusts, gambling houses, liquor law violations, election law violations, soliciting political contributions, statement by voter regarding his qualifications, damage actions, and investigations and prosecutions under laws regulating common carriers, general assembly investigations, prosecutions against public officials for disclosing sealed bids, proceedings auxiliary to executions, examinations by board of control of state institutions, any investigation relating to public work, state tax commission, department of social services

KANSAS

A. Immunity from prosecution for transaction to which compelled testimony relates.

Kan. Stat. Anno.

17-1265(d)	securities commissioner
21-943	gambling
40-2413	investigation of unfair trade practices

44-714(i)	employment security law
50-129	bucket shop
50-156	antitrust laws
50-507	dairy products–unfair trade practices–civil action
60-1208(c)	actions to oust public officials
62-301	investigations into violations of gambling and liquor laws
65-1454	regulation of dentists and dental hygienists
66-114	investigation of public utilities rates
66-150	state corporation commission

B. Immunity from prosecution limited to subject matter of proceeding.

Kan. Stat. Anno.

50-110	prosecutions for restraint of trade
62-1428	gambling prosecutions

C. Immunity from prosecution for offense about which answers are evidence.

50-140	antitrust–civil actions

D. Immunity from use of compelled testimony.

46-109	legislative investigating commission
50-137	grain dealers–regulations against pooling–civil actions

KENTUCKY

A. Immunity from prosecution for transaction to which compelled testimony relates.

Kentucky Rev. Stat. Anno. (1969)

278.350	public service commission
436.510	gambling

B. Immunity from prosecution for offense under particular statute necessarily disclosed.

Kentucky Rev. Stat. Anno. (1969)

242.420	alcoholic beverage laws
432.070	criminal syndicalism and sedition
432.520	failure to protect prisoner
435.250	sending threatening letters
436.510	horse races, lotteries
437.140	conspiracy

C. Immunity from use of compelled testimony.

Kentucky Rev. Stat. Anno. (1969)

124.330	election laws

LOUISIANA

A. Immunity from prosecution for transaction to which compelled testimony relates.

West's La. Stat. Anno.—Rev. Stat.

23:1663	unemployment compensation
51:146	monopolies
51:426	civil actions to enjoin unfair trade practices—testimony of defendant
53:204	sabotage prosecutions

B. Immunity from use of compelled testimony

15:468	bribery

MAINE

A. Immunity from prosecution for transaction to which compelled testimony relates.

Maine Rev. Stat. Anno.

Tit. 10, § 1103	conspiracies in restraint of trade
Tit. 24, § 2916	insurance trade practices

Tit. 25, § 459	sabotage prosecutions
Tit. 26, § 1082(10)	employment security commission
Tit. 35, § 1517	accepting rebates on automobile insurance

B. Immunity from use of compelled testimony.

Maine Rev. Stat. Anno.

Tit. 12, § 3153	conservation laws participant's testimony
Tit. 12, § 4507	conservation laws fish and shellfish regulations testimony of any person

MARYLAND

A. Immunity from prosecution for transaction to which compelled testimony relates.

Anno. Code of Md.

Art. 48A, § 28	insurance commissioner
Art. 95A, § 12(j)	unemployment insurance laws
Art. 101, § 8(c)	workmen's compensation commission

B. Immunity from prosecution limited to subject matter of proceeding.

Anno. Code of Md.

Art. 27, § 23	bribery of public officials
Art. 27, § 24	bribery—athletic contests
Art. 27, § 39	conspiracy to bribe, gaming, lotteries
Art. 27, § 262	gaming
Art. 27, § 371	lotteries

C. Immunity from use of compelled testimony.

Anno. Code of Md.

Art. 33, § 231	elections

Art. 75, § 75	enforcement of judgments (compelled to answer only questions which might incriminate as to fraud)
Art. 81, § 360	hearing before comptroller
Rule 628, § c	examination of judgment debtor

MASSACHUSETTS

A. Immunity from prosecution for transaction to which compelled testimony relates.

Ann. Laws of Mass.

C. 3, § 28	legislative committees
C. 55, § 28	corrupt practices in elections
C. 93, § 7	antitrust laws
C. 94A, § 18(c)	milk control commission
C. 110A, § 16	public utilities commission sale of securities
C. 150A, § 7(3)	labor relations commission
C. 151A, § 43	director of division of employment security
C. 151B, § 3(7)	commission against discrimination
C. 175, § 183	insurance rebates
C. 176D, § 13	commissioner of insurance unfair competition
C. 271, § 39	bribery

B. Immunity from use of compelled testimony.

C. 64C, § 23	state tax commission cigarette excise tax

MICHIGAN

A. Immunity from prosecution for transaction to which compelled testimony relates.

Mich. Comp. Laws Anno.

29.7	fire commissioner
168.910	election laws
168.942	election laws
205.3(a)	department of revenue
205.69	general sales tax act
319.65	supervisor of wells–natural dry gas wells
421.9	employment security commission
451.807	uniform securities act
462.27	railroad regulation
487.18	financial institutions act
500.246	insurance code
500.2033	insurance trade practices act
600.2155	antitrust
750.125	bribery
750.157	conspiracy
750.334	incest
750.446	prize fights
750.453	prostitution
767.6	grand jury proceedings

B. Immunity from use of compelled testimony.

Mich. Comp. Laws Anno.

205.517	cigarette tax regulations
319.9	supervisor of wells–oil, gas and wells regulations
319.387	unitization law

MINNESOTA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Minn. Stat. Ann. (1964)

3.14	legislative investigations of bribery
30.45(4)	potato development commission
32A.05	department of agriculture–investigation of unfair trade practices
60A.04(29)	rehabilitation and liquidation act
72A.30	regulation of insurance trade practices
80.22	securities division
231.30	regulation of warehousemen
246.08	commissioner of public welfare
268.12(10)	department of employment security
297.09(4)	state commissioner of taxation–cigarette tax
297.37(4)	state commissioner of taxation–tax on tobacco products
325.49	unfair competition
609.09	criminal code of 1963–all prosecutions–applies to any law which compels testimony

B. Immunity from use of compelled testimony.

Minn. Stat. Ann. (1964)

575.04	examination of judgment debtor
617.325	prosecution for transporting for purposes of prostitution

MISSISSIPPI

A. Immunity from prosecution for transaction to which compelled testimony relates.

Miss. Code Ann. 1942 (Recompiled 1957)

1101	antitrust laws
2049-06	champerty and maintenance
2527	dueling
2529	bucket shop
2630	intoxicating liquors prosecutions
3337	legislative committee hearings
3365-08	general legislative investigating commission
6132-19(a)	state oil and gas board
7417	unemployment compensation
9028-41	state sovereignty commission

B. Immunity from prosecution limited to subject matter of proceeding.

Miss. Code Ann. 1942 (Recompiled 1957)

35	gambling and futures contracts
2531	lottery laws (testimony of purchaser may be compelled)
5861	game and fish act

C. Immunity from use of compelled testimony.

Miss. Code Ann. 1942 (Recompiled 1957)

2530	crimes against legislative power

MISSOURI

A. Immunity from prosecution for transaction to which compelled testimony relates.

Vernon's Ann. Mo. Stat.

136.100	state collector of revenue

386.470	public service commission
416.330	antitrust investigations
416.400	enforcement of antitrust laws

MONTANA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Montana Rev. Codes 1947 (1969 Repl.)

72-122	board of railroad commissioners
94-1617	extortion prosecution
94-2423	gambling

B. Immunity from prosecution limited to subject matter of proceeding.

Montana Rev. Codes 1947 (1969 Repl.)

94-811	bribery

C. Immunity from use of compelled testimony.

Montana Rev. Codes 1947 (1969 Repl.)

94-1307	dueling
94-2913	lobbying

D. Immunity from use of compelled testimony and direct fruits.

Montana Rev. Codes 1947 (1969 Repl.)

94-1471	election frauds

NEBRASKA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Reissue Rev. Stat. of Neb.

18-309	public officers receiving favors from public utilities
44-396	insurance law—trials or hearings

44-1521	unfair competition and trade practices
48-615	commissioner of labor
59-605	pooling by bridge contractors—civil actions
59-824	civil actions to enjoin unlawful restraints of trade

B. Immunity from use of compelled testimony.

Reissue Rev. Stat. of Neb.

28-707	bribery to secure paving contracts
28-960	bucket shop
28-1113	pooling combinations—grain dealers
59-402	lumber and coal dealers—unlawful combinations—civil actions
75-130	railway commission
77-1508	county board of equalization
83-114	investigations by director of public institutions

NEVADA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Nev. Rev. Stat.

522.100(1)	oil and gas conservation commission
612.280	unemployment compensation—proceedings before employment security department
704.530	public service commission—public utility regulation

B. Immunity from prosecution limited to subject matter of proceedings.

Nev. Rev. Stat.

465.050	gambling

C. Immunity from prosecution on account of testimony.

Nev. Rev. Stat.

178.572	criminal proceedings grand jury or trial

D. Immunity from use of compelled testimony.

199.090	bribery

NEW HAMPSHIRE

A. Immunity from prosecution for transaction to which compelled testimony relates.

N.H. Rev. Stat.

176:16	liquor commission
282:9(I)	department of employment security
356:6	combinations and monopolies
402:72	regulation of insurance companies
417:16	unfair insurance trade practices
516:34	criminal proceedings generally
589:6	sabotage prevention act

B. Immunity from prosecution for matters disclosed.

N.H. Rev. Stat.

15:7	lobbyists
68:9	ballot-law commission

C. Immunity from use of compelled testimony directly or indirectly.

N.H. Rev. Stat. 405:23	investigations of foreign insurance companies

NEW JERSEY

A. Immunity from prosecution for transaction to which compelled testimony relates.

N.J. Stats. Anno.

4:12A-17	milk control board
11:1-15	civil service commission
17:9A-263	banking act
17:29B-13	insurance trade practices
32:23-86	waterfront commission
43:21-11	unemployment compensation board
48:2-36	public utilities commission
49:1-19	securities law
58:1-29	state water policy commission

B. Immunity from use of compelled testimony.

N.J. Stats. Anno.

2A:87-2	abortion trial
2A:93-9	trial for bribery of labor representative
50:5-11	shellfish regulations
52:13-3	legislative investigations

NEW MEXICO

A. Immunity from prosecution for transaction to which compelled testimony relates.

N.M. Stats. 1953 Anno.

58-9-19	insurance regulation
59-9-11.9	employment security commission proceedings–unemployment compensation
64-27-40	corporation commission–regulation of motor carriers
65-3-7	oil conservation commission

B. Immunity from use of compelled testimony.

N.M. Stats. 1953 Anno.

40A-9-15	sexual offenses
40A-19-14	gambling
69-7-7	corporation commission hearings on railroad and communication rates

NEW YORK

A. Immunity from prosecution for transaction to which compelled testimony relates.

McKinney's Consol. Laws of N.Y.

Agric. & Mark. Law, § 33	any investigation
Banking Law, § 38(2)	any investigation
Bus. Corp. Law, § 109(b)	civil action by attorney general against corporation
Bus. Corp. Law, § 1209(b)	receivership proceedings
Canal Law, § 134(2)	investigations by commissioner of transportation
CPLR, § 5211	examination of judgment debtor
Code of Cr. Proc., § 619-c, 619-d	criminal proceedings generally
Conservation Law, § 1-0321	any investigation
Election Law, § 334	regulation of campaign expenditures
Executive Law, § 436	bingo control commission

Gen. Bus. Law, § 345	regulation of monopolies
Gen. Bus. Law, § 351-e	bucket shop prosecutions
Gen. Corp. Law, § 170(2)	receiverships of corporations
Insurance Law, § 25	hearings or proceedings
Insurance Law, § 40-A	insurance premium rebates criminal proceedings
Labor Law, § 708(4)	unfair labor practices investigations
Military Law, § 238-a(9)	damaging military or naval equipment criminal proceedings
Pub. Serv. Law, § 20(2)	public service commission investigations
Real Property Law, § 442-e(7)	regulation of insurance brokers
Unconsol. Laws, § 6464(2)	Port Authority hearings
Unconsol. Laws, § 8586(7)	rent control administration
Unconsol. Laws, § 8607	city housing rent agency

NORTH CAROLINA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Gen. Stat. of N.C.

14-354	influencing agents and servants
15-90	lynching—investigations and trial

18-8	enforcement of liquor laws
49-6	bastardy and support proceedings testimony of mother
58-54.13	unfair insurance practices
96-4(j)	employment security commission
163-198	election laws

B. Immunity from prosecution limited to subject matter of proceeding.

Gen. Stat. of N.C.

8-55	gambling, liquor laws
14-337	vagrancy, keeping bawdy house
18-27	liquor laws

C. Immunity from prosecution on account of testimony.

Gen. Stat. of N.C.

14-38	hazing, trials
75-11	investigations of corporations by attorney general

D. Immunity from use of compelled testimony.

Gen. Stat. of N.C.

1-357	supplemental proceedings against judgment debtor
16-2	gaming
116-44	licensing of amusements at University of North Carolina
153-9(30)	board of county commissioners–investigations

NORTH DAKOTA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Century Code Anno	
5-01-11	person arrested for intoxication testimony of source of liquor compelled
16-20-10	corrupt election practices
26-10-07	insurance company aiding political party
26-10-15	regulation of insurance agents
26-10-13	unfair insurance practices
38-08-12	control of gas and oil resources hearings before industrial commission
49-05-07	regulation of public utilities
51-10-08	unfair trade practices civil action
52-06-26	social security hearings
54-17-17	industrial commission investigations
54-23-13	board of administration investigation into state institutions

B. Immunity from use of compelled testimony.

Century Code Anno	
12-19-27	offenses against public peace
19-03-26	narcotics violations (testimony in prosecution against another)
28-25-06	examination of judgment debtor
62-04-02	unlawful discharge of firearms

OHIO

A. Immunity from prosecution for transaction to which compelled testimony relates.

Page's Ohio Rev. Code Anno.

§ 101.44	legislative committee hearings
§ 2917.04	bribery of public official or referee
§ 4903.08	public utilities commission hearings

OKLAHOMA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Const., Art. 2, § 27	any criminal prosecution
15 Okl. Stat. Ann. § 599.14	unfair sales practices–civil action
21 Okl. Stat. Ann. § 951	gambling investigations
21 Okl. Stat. Ann. § 1265.6	criminal syndicalism–investigation or prosecution
40 Okl. Stat. Ann. § 221(j)	employment security commission–hearings
71 Okl. Stat. Ann. § 405(d)	securities administrator–investigations
85 Okl. Stat. Ann. § 104	workmen's compensation commission–investigations

B. Immunity from prosecution for matters revealed by testimony.

12 Okl. Stat. Ann. § 1600.20b	uniform reciprocal enforcement of support–testimony of obligor

C. Immunity from use of compelled testimony.

12 Okl. Stat. Ann. § 845	enforcement of judgments (compelled to answer only questions which incriminate as to fraud–exclusion in fraud prosecution)
21 Okl. Stat. Ann. § 564	civil actions–testimony showing evidence of debt received contrary to law
21 Okl. Stat. Ann. § 670	duels and challenges–investigations or trial
26 Okl. Stat. Ann. § 446	election offenses–bribery prosecutions

OREGON

A. Immunity from prosecution for transaction to which compelled testimony relates.

Ore. Rev. Stat. § 59.830	prosecutions for securities regulations violations
§ 167.520	gambling
§ 279.034	collusion in public contracts
§ 471.770	liquor control commission–investigations
§ 496.710	game law enforcement proceedings
§ 506.625	commercial fishing law enforcement proceedings
§ 757.590	utility regulations violations–civil actions
§ 760.605	railroad regulations violations–civil actions

B. Immunity from prosecution on account of testimony.

Ore. Rev. Stat.

§ 171.525	legislative committee hearings

C. Immunity from use of compelled testimony.

Ore. Rev. Stat.

§ 625.340	bakeries–advertising and trade practices–civil proceedings
§ 646.170	price discrimination–civil actions

PENNSYLVANIA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Purdon's Penna. Stat.

12 P.S. § 2243	examination of judgment debtor
19 P.S. § 640.3	organized crime or racketeering–any proceeding
35 P.S. § 2104	sabotage
40 P.S. § 280	insurance commission hearings–misrepresentation, rebates by agents
40 P.S. § 476	insurance commission hearings–misrepresentation by companies
43 P.S. § 211.10(d)	labor relations board–hearings
43 P.S. § 828	unemployment compensation board–hearings
43 P.S. § 957(g)	human relations commission–hearings
66 P.S. § 1402	public utility commission–investigations

B. Immunity from prosecution limited to subject matter of proceeding.

Purdon's Penna. Stat.

25 P.S. § 3326	testimony by unqualified voter concerning for whom he voted

C. Immunity from use of compelled testimony.

Purdon's Penna. Stat.	
Const., Art. 7, § 8	contested elections
18 P.S. § 2	bribery
18 P.S. § 2483	auction sales by trustee—civil proceedings
25 P.S. § 3467	contested elections
39 P.S. § 48	receiverships—examinations of insolvent and others
53 P.S. § 13378	city counsel—hearings

RHODE ISLAND

A. Immunity from prosecution for transaction to which compelled testimony relates.

General Laws of R.I.	
11-7-7	bribery of public officials
11-19-29	gambling prosecutions (testimony of participants)
18-9-12	investigations of charitable trusts
27-4-7	rebates on life insurance—investigations or trial
27-8-8	rebates on casualty insurance—investigations or trial
28-7-36	labor relations board—hearings
28-42-54	employment security—hearings
39-4-21	public utility regulations—public utility administrator—hearings
39-5-12	public utility board—hearings
39-12-34	regulation of motor carriers of property—public utility administrator—investigations

B. Immunity from use of compelled testimony.

General Laws of R.I.

8-9-18	examination of person suspected of withholding property of decedent estate or property of ward

SOUTH CAROLINA

A. Immunity from prosecution for transaction to which compelled testimony relates.

Code of Laws of South Carolina 1962

§ 24-146	regulation of electrical utilities—hearings
§ 37-1230	chief insurance commissioner—hearings
§ 58-445	regulation of telephone companies—public service commission—investigations
§ 62-307	uniform securities act—hearings
§ 66-54	antitrust proceedings
§ 66-115	general investigations of violations of laws by corporations
§ 68-70	employment security commission—investigations

B. Immunity from use of compelled testimony.

Code of Laws of South Carolina 1962

§ 10-1723	examination of judgment debtor (compelled to answer only questions which incriminate as to fraud)
§ 16-85	abortion prosecutions
§ 58-1257	general railroad law—civil actions

SOUTH DAKOTA

A. Immunity from prosecution for transaction to which compelled testimony relates.

South Dakota Compiled Laws 1967

61-3-8	unemployment compensation—hearings

B. Immunity from prosecution limited to subject matter of proceeding.

South Dakota Compiled Laws 1967

22-25-5	gambling
23-40-12	witness for state in any investigation or prosecution

C. Immunity from use of compelled testimony.

South Dakota Compiled Laws 1967

Const., Art. III, § 28	bribery of public officials
15-20-9	examination of judgment debtor (compelled to answer only questions which incriminate as to fraud)
22-12-5	attorney purchasing claim with intent to sue—civil actions

TENNESSEE

A. Immunity from prosecution for transaction to which compelled testimony relates.

Tenn. Code Anno.

3-319	legislative committee investigations
8-2707	investigations of public officials
39-4412	treason, disloyal conduct, sabotage
40-1823	grand jury testimony
50-1342	employment security law—hearings

B. Immunity from prosecution limited to subject matter of proceedings.

Tenn. Code Anno.	
2-2240	election law prosecutions

C. Immunity from use of compelled testimony.

Tenn. Code Anno.	
69-107	civil antitrust actions

TEXAS

A. Immunity from prosecution for transaction to which compelled testimony relates.

Vernon's Ann. Penal Code Art. 598	fire insurance laws—trials
V.A.P.C. Art. 978	violations of game, fish and oyster laws
Vernon's Texas Code Ann., Bus. & Corp. § 15.20	proceedings to discover and enjoin monopolies
Vernon's Ann. Civ. Stat. Art. 5429f(13)	legislative committee hearings
V.A.Civ.S. Art. 7446	antitrust laws

B. Immunity from prosecution limited to subject matter of proceedings.

V.A.P.C. Art. 639	gaming
V.A.P.C. Art. 652	horse racing pools
V.A.P.C. Art. 652a(7)	bookmaking
V.A.Civ.S. Art. 5205	discrimination against persons seeking employment

C. Immunity from prosecution on account of testimony.

V.A.P.C. Art. 1657	special rebates—transportation

UTAH

A. Immunity from prosecution for transaction to which compelled testimony relates.

Utah Code Anno. 1953

32-1-33	liquor control act, hearings
76-27-6	gaming
76-56-7	sabotage

B. Immunity from use of compelled testimony.

Utah Code Anno. 1953

76-16-6	dueling

VERMONT

A. Immunity from prosecution for transaction to which compelled testimony relates.

Vt. Stat. Anno. (1959 Rev.)

12 V.S.A. 1664	any prosecution or investigation into violations of criminal law providing for fine or imprisonment
13 V.S.A. 3436	treason prosecutions

VIRGINIA

A. Immunity from prosecution for any transaction to which compelled testimony relates.

Code of Virginia Anno. 1950

§ 4-94	regulation of sale of alcoholic beverages
§ 18.1-74.1.3	combinations to injure others in reputation or business—civil or criminal actions
§ 18.1-398	inducing litigation against the state
§ 29-181	game laws (witness for state)

§ 59.1-38	trusts and monopolies
§ 60.1-43	unemployment compensation commission

B. Immunity from prosecution limited to subject matter of proceeding.

Code of Virginia Anno. 1950.

§ 18.1-280	bribery of public officials
§ 18.1-405	corruptly influencing agent (witness for state)
§ 19.1-266	gambling prosecutions
§ 24-449	election laws

WASHINGTON

A. Immunity from prosecution for transaction to which compelled testimony relates.

Rev. Code of Wash. Anno.

10.52.090	in every criminal case where privilege abrogated
9.02.040	applied to abortion, drugs
9.05.050	applied to criminal anarchy
9.18.080	applied to bribery and corruption
9.30.050	applied to dueling
9.47.130	applied to conducting gambling, pool selling, bookmaking
21.20.380(2)	securities act
49.60.150	law against discrimination
50.12.120	unemployment compensation hearings

B. Immunity from use of compelled testimony.

Rev. Code of Wash. Anno.

Const., Art. 2, § 30	bribery and corrupt solicitation of public officials

§ 80.04.080	regulation of public utilities
§ 81.04.080	regulation of transportation

WEST VIRGINIA

A. Immunity from prosecution for transaction to which compelled testimony relates.

West Virginia Code of 1961

Const. Art. VI, § 45	bribery of public officials
§ 57-5-4	any criminal proceeding
§ 60A-2-28	liquor control commission

WISCONSIN

A. Immunity from prosecution for transaction to which compelled testimony relates.

West's Wisc. Stat. Anno.

13.35	legislative hearings
93.17	department of agriculture
97.04(10)	dairy, food and drugs regulations
111.07(6)	employment relations board, unfair labor practices
147.20(2)	civil actions to revoke medical licenses
180.09(4)	securities law—investigations or hearings
196.48	regulation of utilities
207.13	unfair insurance practices
885.24	actions by state to recover public monies or involving official conduct

885.25	civil actions by state against corporations to recover taxes, etc. (testimony of corporate agent)
885.34	criminal proceedings generally

B. Immunity from prosecution limited to subject matter of proceedings.

West's Wisc. Stat., Anno.

Const., Art. 13, § 11	participant in giving free passes or franks to public officers
176.40	intoxicating liquors

WYOMING

A. Immunity from prosecution for transaction to which compelled testimony relates.

Wyoming Stats. 1957 Anno.

§ 6-212	proceedings for destruction of gambling devices and to assist in prosecution of gambling
§ 26.1-40(a)	insurance code
§ 27-33(j)	employment security commission
§ 27-282(d)	occupational health and safety act
§ 37-35	public service commission regulation of public utilities
§ 39-36(a)	state director of revenue

B. Immunity from prosecution limited to subject matter of proceedings.

Wyoming Stats. 1957 Anno.

§ 22-360	election law

C. Immunity from use of compelled testimony.

Wyoming Stats. 1957 Anno.

Const., Art. 3, § 44	bribery of public officials

§ 1-415	examination of judgment debtor (compelled to answer only questions which incriminate as to fraud)
§ 6-205	gambling

FEDERAL LEGISLATION

Immunity from prosecution for transaction to which compelled testimony relates.

United States Code	
7 U.S.C. § 15	Commodity Exchange Act
7 U.S.C. § 87f	Grain Standards Act
7 U.S.C. § 222	Packers and Stockyards Act
7 U.S.C. § 499m(f)	Perishable Agricultural Commodities Act
7 U.S.C. § 2115	Cotton Research and Promotion Act
12 U.S.C. § 1820(d)	Federal Deposit Insurance Corporation
15 U.S.C. § 32	antitrust laws
15 U.S.C. § 49	Federal Trade Commission Act
15 U.S.C. § 77v(c)	Securities Act
15 U.S.C. § 78u(d)	Securities Exchange Act
15 U.S.C. § 79r(e)	Public Utilities Holding Company Act
15 U.S.C. § 80a-41d	Investment Companies Act
15 U.S.C. § 80b-9d	Investment Advisors Act
15 U.S.C. § 155(c)	China Trade Act
15 U.S.C. § 717m(h)	Federal Power Commission–regulation of natural gas
16 U.S.C. § 825f(g)	Federal Power Commission–regulation of public utilities
18 U.S.C. § 835(b)	Interstate Commerce Commission–investigations concerning explosives

18 U.S.C. § 895	extortionate credit transactions
18 U.S.C. § 1406	narcotics
18 U.S.C. § 2424(b)	White Slave Trade Act (immunity under federal laws)
18 U.S.C. §§ 3486 (a), (c)	internal security
19 U.S.C. § 1333(e)	Tariff Commission
26 U.S.C. § 4874	cotton futures tax.
26 U.S.C. § 7493	cotton futures tax
27 U.S.C. § 202(c)	Federal Alcohol Administration
29 U.S.C. § 209	Fair Labor Standards Act
29 U.S.C. § 521(b)	Labor-Management Relations Disclosure Act
42 U.S.C. § 405(f)	Social Security Act
42 U.S.C. § 2201(c)	Atomic Energy Commission Act
45 U.S.C. § 362(c)	Railroad Unemployment Insurance Act
46 U.S.C. § 827	Shipping Act
46 U.S.C. § 1124(c)	Merchant Marine Act
47 U.S.C. § 409(*l*)	Communications Act
49 U.S.C. § 43	Elkins Act
49 U.S.C. §§ 46-48	Interstate Commerce Act
49 U.S.C. § 305(d)	Motor Carriers Act
49 U.S.C. § 916(a)	Water Carriers Act
49 U.S.C. § 1017(a)	Freight Forwarders Act
49 U.S.C. § 1484(i)	Aviation Act
50 U.S.C. § 792	Subversive Activities Control Board
50 U.S.C. App. § 643a	war contractors investigations
50 U.S.C. App. § 1152(a)(4)	national defense contracts investigations

50 U.S.C. App. § 1896(f)(6)	rent control
50 U.S.C. App. § 2026(b)	Export Control Act
50 U.S.C. App. § 2155(b)	Defense Production Act

B. Immunity from use of compelled testimony.

United States Code

11 U.S.C. § 25(a)(10)	bankruptcy proceedings
49 U.S.C. § 9	damages action against common carrier

C. Privilege abrogated—no immunity provided by statute.

United States Code

2 U.S.C. §§ 192, 193	congressional investigations
8 U.S.C. § 1106	Joint Congressional Committee on Immigration and Nationality Policy